

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1252 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

M.S. PACHIGAR

Versus

RATILAL NAGAINDas MODI

Appearance:

MR. P.G. DESAI for Petitioner
MR. BHAVIN PATEL for Respondent No. 1
MR. K.T. DAVE, ADDL. PUBLIC PROSECUTOR for Respondent No. 2

CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 16/06/98

ORAL JUDGEMENT

Being aggrieved by the judgment delivered in Municipal Case No. 842/82 by the Judicial Magistrate (First Class) on 31.3.1986, the appellant has approached this court.

2. The facts in a nutshell of the case in question are as under:-

3. The original complainant is Mr. M.S. Pachigar, Town Development Inspector of Surat Municipal Cororation. He filed a complaint against present respondent No.1 alleging breach of provisions of sections 253, 254 and 256 of the Bombay Provincial Municipal Corporations Act, 1949 (hereinafter referred to as 'the BPMC Act'). The said complaint was filed on 11.8.1982. It has been alleged in the complaint that the accused had put up construction of a building which was situated within the Surat Municipal Corporation without obtaining requisite permission under the above-referred to sections of the BPMC Act.

3. After considering relevant evidence, the learned Judicial Magistrate (First Class) acquitted the accused by his judgment dated 31.3.86. The said judgment has been challenged before this court. Ld. Advocate Shri P.G. Desai appearing for the appellant (original complainant) has submitted that the impugned judgment is unjust and improper as it has been passed without appreciation of evidence. It has been submitted by him that in spite of the fact that the accused had put up construction without any permission, the learned magistrate had acquitted him. He has further submitted that no permission with regard to the additional construction put up by the accused was adduced in evidence by the accused and yet the accused was acquitted.

4. I have heard the concerned learned advocates and have also perused the record and proceedings pertaining to the case. Upon perusal of the judgment in question, it is very clear that no evidence was led by the complainant with regard to the nature of construction put up by the accused. The learned magistrate has rightly observed that no panchnama giving details with regard to the alleged construction was drawn. Moreover, no independent witness was examined by the complainant. Even owner of the premises was not examined. Thus, there was no sufficient evidence to establish that the accused had put up construction in violation of the provisions of the sections referred to hereinabove.

5. In the circumstances, I do not find any substance in the arguments advanced by learned advocate Shri Desai and there appears to be nothing in the judgment which cannot be said to be incorrect or illegal.

6. Ld. Advocate Shri Bhavin Patel appearing for learned advocate Shri A.J. Patel has supported the judgment and has submitted that, in absence of any evidence with regard to illegal construction, the learned magistrate had rightly acquitted the accused. There appears to be much substance in the said statement of Shri Patel.

7. In the circumstances, I do not find any substance in this appeal and the appeal is dismissed with no order as to costs.

(HN)